

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

WORCESTER, ss.

In re:) Chapter 7
WESTBOROUGH SPE LLC,) Case No. 23-40709-CJP
Debtor.)
)

MOTION FOR COURT INTERVENTION REGARDING CONTINUATIONS AND TO
INVESTIGATE POSSIBLE COLLUSIVE TRANSACTIONS RELATED TO THE SALE OF
DEBTOR PROPERTY

Now comes Lolonyon Akouete, creditor in the above-captioned case, and respectfully requests that this Honorable Court intervene concerning the repeated continuations requested by the Trustee, Jonathan R. Goldsmith, and the Town of Westborough, a secured creditor. The Movant suspects these continuations have been used to delay proceedings detrimentally and potentially collusively, specifically regarding the debtor's property located at 231 Turnpike Rd, Westborough, MA 01581.

I. BACKGROUND

1. Property Sale Concerns:

- The property involved, located at 231 Turnpike Rd, Westborough, MA 01581, is central to the ongoing bankruptcy proceedings. This property has become a focal point of disputes and questionable transactions.
- The Town of Westborough intends to sell the property to Lax Media for \$2,500,001 despite the trustee's acceptance of a higher offer from Ferris Development Group, LLC for \$2.8 million, which can close within 14 days.
- Lax Media had previously offered \$5 million for the same property, suggesting a significant undervaluation in the new offer, indicative of potential collusion.

2. Continuations and Transparency Issues:

- Specific dates when these continuations were requested include:
 - Initially scheduled for October 25, 2023, continued to November 29, 2023.
 - Continued again to December 21, 2023, and further to February 13, 2024.
 - Most recently, continued to June 4, 2024.
- These continuations total approximately 7.4 months and raise concerns about transparency, particularly as settlement discussions remain secretive, potentially disadvantaging other creditors.

3. Implications of Delay:

- While final settlement and the sale of the property will require court approval and provide an opportunity for creditors to object, the ongoing delay tactics result in wasted time and resources that cannot be recuperated. This unnecessary delay may serve the interests of specific parties at the expense of the estate's ability to maximize returns for all creditors.

II. LEGAL GROUNDS FOR MOTION

1. Bankruptcy Code Provisions:

- o **11 U.S.C. § 363(b)** permits the trustee to use, sell, or lease property of the estate after notice and a hearing. The code requires such transactions to maximize the value of the estate and ensure fairness.
- o **11 U.S.C. § 548(a)** pertains to fraudulent transfers and obligations, providing grounds to avoid transactions made with the intent to hinder, delay, or defraud creditors.
- o **11 U.S.C. § 704(a)(1)** mandates the trustee to collect and reduce to money the property of the estate for which the trustee serves, and to close the estate as expeditiously as is compatible with the best interests of parties in interest.

2. Request for Investigation:

- o Given the suspicious nature of the sale process and the significant delay in proceedings, there is substantial basis to suspect collusive behavior intended to facilitate the sale below the property's market value.

III. RELIEF REQUESTED

Movant respectfully requests the Court to:

1. **Order an immediate investigation** into all sale processes and negotiations related to 231 Turnpike Rd.
2. **Prevent any further continuations** of related hearings unless justified transparently in court.
3. **Appoint an independent examiner** to review the trustee's and the Town's actions regarding this property sale.
4. **Enforce transparency** in all settlement negotiations and sale processes to protect the interests of the estate and its creditors.
5. **Grant such other and further relief** as the Court deems just and proper.

IV. CONCLUSION

For the reasons stated herein, Movant believes that the handling of 231 Turnpike Rd and the associated legal continuations may not be in the best interest of all parties involved and suggests improper conduct. Immediate court intervention is necessary to ensure the integrity of the bankruptcy process and to protect the rights of all creditors.

DATED: April 29, 2024, Respectfully submitted:

By creditor,



Lolonyon Akouete
800 Red Milles Rd
Wallkill NY 12589
info@smartinvestorsllc.com
(443) 447-3276

EAST/VALLEY

Westboro accepts \$5M bid for cinema

Elaine Thompson elaine.thompson@telegram.com

Published 5:00 p.m. ET Nov. 28, 2018 | Updated 4:55 a.m. ET Nov. 29, 2018

WESTBORO – The Board of Selectmen has accepted a \$5 million bid from a Walpole-based media corporation to purchase and operate a cinema at the long-vacant Regal Cinemas building on Route 9.

LAX Media LLC, which operates Apple Cinemas in Cambridge, and Waterbury and Barkhamsted, Connecticut, submitted the high bid of \$5,005,005. Two other bids that included maintaining a movie theater on the property came from Grossman Development of Southboro for \$4 million; and \$3.1 million from Florida-based Cinema World of Florida, which operates Lincoln Mall 16 & Cinema World & Games in Lincoln, Rhode Island. The fourth and lowest bid, at \$2.5 million, came from Black Socks Corp., based in Marlboro, which proposed building a regional grocery store on the site.

Selectmen held a short meeting Nov. 20 to award the bid to LAX Media. Chairman Leigh Emery said it offered the most advantageous economic benefit to the town.

The bid “is a million dollars over the nearest other proposal; it is above the appraised value; it closes 30-60 days earlier,” Ms. Emery said. “It’s a business model that we think fits best with our strategic planning that the Board of Selectmen has worked out the past six months or so and voted as a plan for moving forward for keeping our community a family-friendly town with recreation activities available for all age groups in an affordable fashion.”

The 12-screen theater was the only cinema in town. It was built in 1997, on a 29-acre parcel at 231 Turnpike Rd. (Route 9) in Stagecoach Plaza. The theater abruptly closed its doors last fall, less than a month before the 20-year lease was to expire. The property is appraised at \$4.79 million.

The town, however, has been unable to find the owner. The original landlord, Westboro SPE LLC, registered in Delaware, administratively dissolved and withdrew its registration

to do business in Massachusetts in 2007. The limited liability company was an entity created by Babcock & Brown, an Australian company that went out of business in 2009. Westboro SPE's purchase loan on the property from U.S. Bank was satisfied around the time of the theater closing. The bank has said it does not have contact information for the landlord.

James Malloy, the former town manager who left in October to become town manager in Lexington, said the town will have to hold on to the money from the new owner for three years in case a claim is filed against the town. But he said that would not stop the selling and development of the property.

The new owner did not reply to an email asking about plans for renovations and when the cinema will open.

Westborough MA
Contract: RFP 22-0080
Sale of 231 Turnpike Road, Westborough

Addendum 2

Ques 1: Is the town selling the fee simple interest?

Ans: **No**

Ques 2: If not how long until the previous owners right of redemption expires via tax title?

Ans: **1/5/2023 – one year from foreclosure.**

Ques 3: What was the tax title amount?

Ans: **\$391,541.93 (includes EverSource bills)**

Ques 4: Do you know what the ceiling height of the building is? Also, what is the column spacing?

Do you have a floor plan of the building?

Ans: The Building Commissioner has responded that old building permits can be found on the following link and searching under 231 Turnpike Rd* <https://portal.laserfiche.com/Portal/Welcome.aspx?repo=r-6c8eaee8>

End of Addendum 2

**Westborough MA
RFP 22-0080
Sale of Property at 231 Turnpike Rd**

Addendum 4

Questions and answers from the Site Visit and Pre-Bid Conference on June 16, 2022

Ques 1: What is the timeline for Proposal evaluation?

Ans 1: There is no set time limit for evaluations but the Town would like to dispose the property as soon as possible.

Ques 2. If this project is redeveloped, will the build permits be grandfathered in as far as conservation commission?

Ans 2: This site has special comprehensive Permit coverage and existing limits will be sustained provided that any redevelopment is within the latitude of the existing comprehensive permit. Redevelopment of the site may require a Notice of Intent or other wetland permitting. All proposed development will need to meet today's standards for the Wetlands Protection Act and the local By-law. However, existing the limits of the developed property are grandfathered with regard to wetlands.

Ques 3. Comprehensive special Permit is for the whole area?

Ans: Yes it is for the whole area.

Ques 4. Do I need a special permit if I want to operate as a Cinema?

Ans: No special permit is not needed for same use. Just building permits and an occupancy permit.

Ques 5. Will the closing happen after the redemption period expires?

Ans: The Town is willing to consider closing on the property after the redemption period has expired, provided the closing occurs no later than January 30, 2023, and, further, that the Town may give preference to proposers who are willing to close on the property prior to the expiration of the redemption period.

Ques 6. What is the Select Board's preference for the use of the property?

Ans: Bidders should refer to the RFP evaluative criteria. These were discussed by the Board in several meetings.

Ques 7. Who is responsible for expenses until closing?

Ans: The Town of Westborough is responsible for costs associated with the Property until the Property is conveyed to the successful proposer at the closing.

Ques8. Any Liens on the Property?

Ans: No, there are no known liens on this property

Ques 9: Does current zoning allow use of property as Sports facility?

Ans: Yes, it should be allowed. We will have to look at your proposal and review current permitting.

Ques 10. How can I get building plans of the property?

Ans: Please review Addendum 2 on Bidnet. You can use the link in addendum 3 to access building plans for Regal Cinema.

Ques 11. Has Bankruptcy of former owner been reviewed?

Ans: No, it has not been reviewed but historically, parties related to the ownership and bankruptcy have indicated no ownership interest in the property.

Ques 12. Did Eversource have a lien on this property?

Ans: Town had to pay the utilities expenses to Eversource but there was no lien. There are no liens currently on this property to the best of our knowledge.

End of Addendum 4

CERTIFICATE OF SERVICE

I, Lolonyon Akouete, a creditor, hereby certify that the above document is served by email and mailing a copy of the same, first-class mail, to the following:

Stephen F. Gordon, Attorney of the Petitioners
(Email: sgordon@gordonfirm.com)
The Gordon Law Firm LLP
River Place 57 River Street Wellesley, MA 02481

Scott A. Schlager on behalf of,
Nathanson & Goldberg, P.C., a creditor.
(Email: sas@natgolaw.com)
183 State Street, 5th Floor Boston, MA 02109

Assistant U.S. Trustee
Richard King
Office of US. Trustee
446 Main Street 14th Floor
Worcester, MA 01608
USTPRegion01.WO.ECF@USDOJ.GOV

Jonathan R. Goldsmith
Chapter 7 Trustee
trusteedocs1@gkalawfirm.com
Goldsmith, Katz & Argenio P.C.
1350 Main Street, 15th Floor.
Springfield, MA 01103

Paul W. Carey, Attorney of Creditor
FERRIS DEVELOPMENT GROUP, LLC
(Email: pcarey@mirickoconnell.com)
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street, Worcester, MA 01608

Brian W. Riley, Attorney of Creditor
Jeffrey T. Blake, Attorney of Creditor
Roger L. Smerage, Attorney of Creditor
TOWN OF WESTBOROUGH
(Email: briley@k-plaw.com)
(Email: jblake@k-plaw.com)
(Email: rsmerage@k-plaw.com)
KP Law, P.C. 101 Arch Street,
12th Floor Boston, MA 02110

Gary M Ronan
David M Abromowitz
Goulston&stорrs
GRonan@goulstonstорrs.com
DAbrowitz@goulstonstорrs.com
400 Atlantic Avenue
Boston, MA 02110



Lolonyon Y Akouete